

BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:

LEO'S A-C, INC.
19355 E. Windrose Drive
Rowland Heights, CA 91748

Employer

Docket No. 02-R3D3-9237

**DENIAL OF PETITION
FOR RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code hereby denies the petition for reconsideration filed in the above entitled matter by Leo's A-C, Inc. (Employer).

JURISDICTION

Between February 25, 2002 and April 10, 2002, a representative of the Division of Occupational Safety and Health (the Division) conducted a complaint inspection at a place of employment maintained by Employer at 2060 University Avenue, Riverside, California (the site).

On April 12, 2002, the Division issued a citation to Employer alleging a serious violation of section 3648(o) [no safety equipment in an elevated aerial device] of the occupational safety and health standards and orders found in Title 8, California Code of Regulations.¹

On June 10, 2002 Employer initiated its appeal with the Appeals Board by phone. On July 15, 2002, the Board received Employer's appeal form and a copy of the citation that Employer wanted to appeal. Upon receipt of those documents it was discovered that Employer had initiated its appeal 31 days late. The deadline to initiate an appeal from a citation is 15 working days from receipt of the citation by an employer. In this case Employer received the citation on April 15, 2002 and the deadline to appeal was May 6, 2002.

On September 12, 2002, the Board sent a letter to Employer asking them to explain why its appeal was filed 31 days late. No response was received from Employer. On February 7, 2003, the Board sent an Order Denying Late Appeal

¹ Unless otherwise specified all references are to sections of Title 8, California Code of Regulations.

to Employer. On January 29, 2004, Employer filed a petition for reconsideration from that Order.

ISSUE

Does the Appeals Board have jurisdiction to entertain Employer's petition for reconsideration?

REASON FOR DENIAL OF PETITION FOR RECONSIDERATION

Labor Code section 6614(a) sets forth the deadline for filing a petition for reconsideration from an Administrative Law Judge's (ALJ) decision or an order of the Board:

At any time within 30 days after the service of any final order or decision made and filed by the appeals board or a hearing officer, any [aggrieved] party . . . may petition the appeals board for reconsideration.... Such petition shall be made only within the time and in the manner specified in this chapter.

A regulation of the Board provides that "[t]he petition for reconsideration shall be filed at the Appeals Board in Sacramento, California, and shall be deemed filed on the date it is delivered or mailed to the Appeals Board." (Title 8, Cal. Code Regs. § 390(a).)

In the present case, the order denying late appeal was served by mail on the parties on February 7, 2003. Because the order was served by mail, the time for filing a petition was extended by 5 days. (See § 348(a).) Thus, the last day to file a petition for reconsideration challenging the order was March 14, 2003, which was 35 days after service of the order. The petition for reconsideration filed by Employer *over ten months later* on January 29, 2004, was well past the statutory deadline.

Longstanding Board precedent establishes that the Board does not have jurisdiction to accept the petition. The Board has consistently held that the Board does not have jurisdiction to accept the petition. The Board has consistently held that the requirement that a petition for reconsideration be mailed or delivered to the Board within 30 days of the issuance of the decision or order to be reconsidered is jurisdictional and the board is without power to enlarge the time for the filing of a petition for reconsideration. (*Unocal Corporation*, Cal/OSHA App. 92-639, Denial of Petition for Reconsideration (May 13, 1993) citing *Dalton Construction Company*, Cal/OSHA App. 83-987, Denial of Petition for Reconsideration (Feb. 7, 1985).) The deadline for filing a petition for reconsideration is jurisdictional and even a petition filed one day beyond the deadline must be denied. (See *Beutler Heating & Air Conditioning, Inc.*, Cal/OSHA App. 93-2220, Denial of Petition for Reconsideration (Mar. 16,

1995) and *Edwin D. Chapman*, Cal/OSHA App. 81-331, Denial of Petition for Reconsideration (Oct. 1, 1981).)

The courts and other adjudicatory agencies have reached the same conclusion when interpreting similar statutory filing deadlines. It is well established that if a time limitation for filing a document with an agency is jurisdictional, and a document is filed beyond the time limit, neither the agency nor a court may grant relief since they lack jurisdiction over the matter. (See *Humbert v. Castro Valley County Fire Protection Dist.* (1963) 214 Cal.App.2d 1, 9.)

The Board finds that Employer did not file its petition for reconsideration within the statutorily prescribed time. Therefore, the Board is without jurisdiction to review the order issued February 7, 2003. Accordingly, the order denying late appeal is final and not subject to review by any court or agency.²

DECISION

Based upon the above, the petition for reconsideration is denied as untimely. The Board has no jurisdiction to re-open the now final Order Denying Late Appeal.

MARCY V. SAUNDERS, Member
GERALD PAYTON O'HARA, Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
FILED ON: March 19, 2004

² Section 390.3(a) states: "[i]f within 30 days of the filing of an order or decision no petition for reconsideration has been filed, and no reconsideration has been ordered on the Appeals Board's own motion, the order or decision is a *final order* of the Appeals Board and not subject to review by any court or agency." (Italics added.)